



Agenda Date: 5/8/01  
Agenda Item: A-1

## STATE OF NEW JERSEY

### Board of Public Utilities

Two Gateway Center  
Newark, NJ 07102

#### TELECOMMUNICATIONS

IN THE MATTER OF THE JOINT )  
APPLICATION OF BELL ATLANTIC-NEW )  
JERSEY INC. N/K/A VERIZON NEW )  
JERSEY INC. AND MGC COMMUNI- )  
CATIONS INC. D/B/A MPOWER COM- )  
MUNICATIONS FOR APPROVAL OF AN )  
INTERCONNECTION AGREEMENT )  
UNDER SECTION 252 OF THE TELE- )  
COMMUNICATIONS ACT OF 1996 )

#### ORDER APPROVING INTERCONNECTION AGREEMENT

DOCKET NO. TO00060390

(SERVICE LIST ATTACHED)

#### BY THE BOARD:

By letter dated June 22, 2000, Bell Atlantic-New Jersey, Inc. n/k/a Verizon New Jersey Inc. (Verizon NJ), a New Jersey corporation, and MGC Communications, Inc. d/b/a Mpower Communications (Mpower), a Delaware corporation (individually, a Party, and jointly, the Parties), pursuant to Section 252(e) of the Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56 (codified in scattered sections of 47 U.S.C. §151 et seq.) (the Act), submitted to the Board of Public Utilities (Board) a joint application (Application) for approval of a negotiated interconnection agreement dated May 17, 2000 (Agreement). Mpower is a local exchange carrier (LEC) as defined by the Act. See 47 U.S.C. §153(26). Verizon NJ is an incumbent local exchange carrier as defined by the Act with the duty to negotiate interconnection agreements pursuant to Section 252 of the Act. See 47 U.S.C. §251(c) and §251(h)(1). The Agreement contains various rates, terms and conditions of interconnection of the networks of Mpower and Verizon NJ, which are necessary for Mpower to begin to offer local telecommunications services within New Jersey.

Verizon NJ and Mpower assert that the Agreement satisfies the requirements for Board approval because it does not discriminate against any other telecommunications carrier, as required by Section 252(e)(2)(A)(i). The Parties aver that the interconnection arrangement contained in the Agreement is available to any other telecommunications carrier operating in New Jersey, and that other carriers are not bound by the Agreement, remaining free to negotiate independently with Verizon NJ pursuant to Section 252 of the Act. Application at 3-4.

Moreover, the Parties state that the Agreement is consistent with the public interest, convenience and necessity, as required by Section 252(e)(2)(A)(ii), because it is an important step towards allowing Mpower to compete with Verizon NJ as a facilities-based carrier in New Jersey for both residential and business customers. Ibid.

The Agreement sets forth the terms, conditions and prices under which Verizon NJ will offer and provide access to unbundled network elements, ancillary services, and wholesale

telecommunications services available for resale to Mpower within each local access and transport area (LATA) in which they both operate in New Jersey. The Parties assert that the Agreement is an integrated package that reflects a negotiated balance of many interests and concerns critical to both Parties. Ibid. Exhibit A of the Agreement sets forth a detailed schedule of itemized charges. Exhibit B of the Agreement sets forth a methodology by which Mpower may present a network element bona fide request to Verizon NJ, as well as the duties of both Parties should such a network element bona fide request be made.

The Agreement is in effect until May 17, 2002, and thereafter the Agreement shall continue in full force and effect unless terminated as provided in the Agreement. Upon the expiration of the initial term, the Parties will negotiate in good faith to maintain interconnection, collocation, and the exchange of traffic, including the use of mediation or arbitration under Section 252 of the Act. However, in the absence of an agreement to renew or extend the Agreement, either Party may terminate it by providing written notice to the other Party at least ninety days in advance of the termination. In the event of such termination, those service arrangements made available under the agreement and existing at the time of termination shall continue without interruption under: (a) a new agreement executed by the Parties, (b) standard interconnection terms and conditions made generally effective by the Board, (c) tariff terms and conditions generally available to competitive LECs (CLECs), or (d) if none of the above is available, under the terms of this agreement on a month to month basis until such time as (a), (b), or (c) becomes available.

By letter dated February 16, 2001, the Division of the Ratepayer Advocate (Advocate) stated that it is satisfied the Agreement does not discriminate against other carriers and is consistent with the public interest, convenience and necessity, and therefore recommended that the Board approve the Agreement.

## DISCUSSION

Pursuant to 47 U.S.C. §252(a)(1), an incumbent LEC may negotiate and enter into a binding interconnection agreement with a carrier requesting interconnection, service or network elements without regard to the standards set forth in 47 U.S.C. §251(b) and (c). In addition, 47 U.S.C. §252(e)(1) requires approval by the Board of any interconnection agreement adopted by negotiation or arbitration, and further requires the Board to approve or reject the Agreement, with written findings as to any deficiencies. The Act provides that the Board may reject a negotiated agreement only if it finds that:

- (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
- (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

[47 U.S.C. §252(e)(2)(A)].

The Board's review of the Agreement and the record in this matter indicates that the Agreement is consistent with the public interest, convenience and necessity, and that the Agreement does not discriminate against telecommunications carriers not parties to the Agreement. Therefore, the Board FINDS that the Agreement meets the standards set forth in the Act, and HEREBY APPROVES the Agreement as presented by the Parties. This approval should not be construed as preapproval of any future petitions for rate recovery of costs

incurred pursuant to the Agreement. Approval does not constitute a determination concerning Verizon NJ's obligations pursuant to Section 271 of the Act, although the Agreement will be taken into consideration in that determination. In addition, approval does not constitute a determination concerning, nor shall the Board be bound by, provisions within the Agreement regarding the confidentiality of information.

The Board notes that amendments or modifications to Board approved interconnection agreements are subject to Board review and approval. No agreement can be read, nor does the Board believe the Parties to the Agreement intend that it be read, to limit the authority of the Board under Section 252(e) of the Act to review interconnection agreements. Accordingly, until and unless otherwise provided by the Board, subsequent amendments or modifications to the Agreement approved herein shall be subject to review and approval by the Board.

Pursuant to 47 U.S.C. §252(h), a copy of the Agreement shall be made available for public inspection and copying within ten days of the issuance of this Order.

DATED: 5/9/01

BOARD OF PUBLIC UTILITIES  
BY:

(signed)  
CAROL J. MURPHY  
ACTING PRESIDENT

(signed)  
FREDERICK F. BUTLER  
COMMISSIONER

ATTEST:

(signed)  
FRANCES L. SMITH  
SECRETARY